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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 748, 750, 758, and 772

[Docket No. 121025583-2583-01]

RIN 0694-AF67

Delegation of License Requirements Determination and Licensing Responsibility to a Foreign Principal Party

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies the responsibilities under the Export Administration Regulations (EAR) of parties involved in export transactions where the foreign principal party in interest (FPPI) is responsible for the transportation out of the United States of items subject to the EAR. These transactions are currently referred to as “routed export transactions.” In such transactions, the U.S. principal party in interest (USPPI) may retain the responsibility and authority under the EAR to determine license requirements and, if necessary, to apply for a license from the Bureau of Industry and Security (BIS). Alternatively, if certain criteria are met, the USPPI may allow the FPPI, acting through a U.S. agent, to assume these responsibilities and authority. To enhance clarity, this proposed rule would remove the defined term “Routed Export Transaction” from the EAR and create a new term to better define certain transactions of particular interest to BIS, specifically a “Foreign Principal Party Controlled Export Transaction” which is a transaction where an FPPI which is responsible for the export of items subject

to the EAR, also assumes the authority and responsibility for licensing requirements. This proposed rule also would refine certain procedures for creating a “Foreign Principal Party Controlled Export Transaction”. These proposed changes are intended to facilitate enhanced public understanding of the EAR by eliminating perceived discrepancies between the EAR and the Bureau of the Census’s Foreign Trade Regulations (FTR) with respect to the definition of a “routed export transaction.” Specifically, this proposed rule will clarify the responsibilities of each party engaged in a transaction subject to the EAR and provide clearer instructions for USPPIs to delegate responsibility for license requirement determinations.

DATES: Comments must be received by [INSERT DATE SIXTY DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is BIS-2014-0004.
- By email directly to publiccomments@bis.doc.gov. Include RIN 0694-AF67 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW, Washington, DC 20230. Refer to RIN 0694-AF67.

FOR FURTHER INFORMATION CONTACT:

Robert Monjay, Office of Exporter Services, Bureau of Industry and Security, by telephone (202) 482-2440 or e-mail: Robert.Monjay@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Overview

The Bureau of Industry and Security is proposing to amend the Export Administration Regulations (EAR) by removing the term “routed export transaction” from the EAR, including the definition of this term in § 772.1, and creating a new defined term, “Foreign Principal Party Controlled Export Transaction.” This new term would define the export transactions currently identified and permitted under § 758.3(b) of the EAR. This new term will better distinguish between the EAR’s concept described in § 758.3(b) and other regulations that use the term “routed export transaction.” In addition to improving the clarity of this EAR-specific term, this proposed rule will also revise the procedures with which parties must comply to use § 758.3(b).

Currently, the Bureau of the Census (Census Bureau) determines through provisions in the Foreign Trade Regulations (FTR) (15 CFR Part 30), whether an export transaction is treated as a “routed export transaction” for the filing of electronic export information (EEI) in the Automated Export System (AES). However, this term risks creating confusion because while “routed export transaction” is defined in both the FTR and the EAR, each set of regulations has a different definition for that term. In order to provide greater clarity to exporters, the term “routed export transaction” would be removed from the EAR. That term would be replaced by a new term that more accurately describes transactions that are of particular interest to BIS, specifically, a subset of “routed export transactions” (as they are currently defined in the EAR) where the FPPI has assumed from the USPPI responsibility for export license determinations and licensing. This change to the Regulations should facilitate enhanced public

understanding, as the same term would no longer be used by both the EAR and FTR to refer to potentially different types of transactions.

This proposed rule would remove the terms “routed export transaction” and “routed transaction” in five sections of the EAR, specifically from §§ 748.4, 750.7, 758.1, 758.3 and 772.1, and add, as appropriate, the new term “Foreign Principal Party Controlled Export Transaction.” Each of these sections would be revised to clarify the responsibilities of each party to a transaction. BIS will still allow an FPPI to assume responsibility and authority for its U.S. agent to determine license requirements and apply for a license on behalf of the FPPI, subject to the revised terms and conditions set forth in § 758.3(b).

These revisions will clarify the responsibilities that accrue to each party engaged in a transaction subject to the EAR, and will provide clearer instructions for USPPIs wishing to delegate responsibility for license requirement determinations and licensing to the FPPI and its U.S. agent. Further, this type of transaction would be defined as a “Foreign Principal Party Controlled Export Transaction.”

Background

On January 18, 2011, President Barack Obama issued Executive Order 13563, affirming general principles of regulation and directing government agencies to improve regulation and regulatory review. Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand.

On August 5, 2011, BIS issued “Notice of Inquiry: Retrospective Regulatory Review Under E.O. 13563,” 76 FR 47527, soliciting public comments on its existing regulations and proposed rules as part of BIS’s ongoing effort to ensure that its regulations are clear, effective, and up-to-date. BIS sought comments identifying any unnecessary compliance burden caused by rules that are unduly complex, outmoded, inconsistent, or overlapping, and comments identifying ways to make any aspect of the EAR more effective in protecting the national security or advancing the foreign policy interests of the United States. This proposed rule arose out of a public comment submitted in response to that notice of inquiry, which is summarized and responded to later in this preamble. In addition, BIS conducts various outreach seminars that include representatives from the U.S. Census Bureau. During some of these outreach seminars, questions arose related to “routed export transactions,” and in particular why the term “routed export transactions” can have different meanings in the EAR and FTR. This proposed rule seeks to address questions brought up during the public comment period and outreach seminars.

Routed Export Transaction

The Census Bureau collects certain information regarding nearly every export from the United States. One such piece of information is whether the transaction is a “routed export transaction.”

An export transaction generally has a U.S. seller, the USPPI, and a foreign buyer, the FPPI. In a typical export transaction, the USPPI ships an item out of the United States and is responsible for all license determinations and for obtaining export clearances, including applying for a license if one is required. The EAR defines a

“routed export transaction” as a transaction where the FPPI agrees to terms of sale that include taking delivery of items inside the United States and assuming responsibility for transporting those items from the United States to a foreign destination. The FPPI, not being in the United States, generally takes possession and exports items through an agent in the United States.

The specific terms of sale between the USPPI and the FPPI in a “routed export transaction” vary with respect to who the responsible party is for determining if a license is required for the transaction and which party will apply for a license if one is required. BIS structures its regulations to allow the parties in each transaction to structure the transaction as they see fit, provided the export is made in accordance with the EAR.

BIS imposes a general obligation on the USPPI, as the exporter, to ensure that a transaction is conducted in full compliance with all export-licensing requirements. However, in a “routed export transaction,” § 758.3(b) of the EAR authorizes the USPPI to allow the FPPI to expressly assume, in writing, responsibility from the USPPI for determining license requirements and for obtaining export authorizations, when required. Under the EAR, an “exporter” must be in the United States. As a result, an FPPI must authorize a U.S. agent to obtain any necessary export authorization when required. The FPPI’s U.S. agent becomes the “exporter” for export control purposes. Without such a written authorization, the USPPI remains the exporter, with all attendant responsibilities, regardless of which party, such as the FPPI or any other party, directs the export. When the USPPI allows the FPPI to assume responsibility for export licensing determination and licensing, the USPPI retains the responsibility to provide the FPPI with certain information, specifically: any and all information the USPPI knows could affect a

licensing determination; upon request, an item's export control classification number (ECCN); sufficient technical information about the item so that the ECCN can be determined.

Response to Comment

This rule is prompted, in part, by a public comment submitted in response to the August 5, 2011 Notice of Inquiry. The comment noted that the definitions of "routed export transaction" in the EAR and the Census Bureau's Foreign Trade Regulations are different and that this causes confusion for exporters. The FTR's definition contains two elements, namely that the FPPI's U.S. agent is given authorization to (1) facilitate an export **and** (2) file the required export information through the Automated Export System (AES). The EAR definition, however, contains only one element, that the FPPI's U.S. agent is given authorization to facilitate an export.

The comment stated that members of the trade community are confused whether to indicate that a transaction is a "routed export transaction" when the FPPI's U.S. agent is physically transporting the goods out of the United States, but the FPPI has not assumed responsibility for determining licensing requirements and obtaining a license. Members of the trade community are further confused whether the FPPI's U.S. agent is authorized to prepare and file the electronic export information (EEI) in the AES.

The commenter suggests that BIS revise its definition of "routed export transaction" to include a second element: that the FPPI must authorize its U.S. agent to be responsible for determining and obtaining the export license authority. While this comment raises issues of significant concern to BIS, the suggested remedy would not fully resolve the issues. Therefore, BIS proposes the below changes to the EAR to clarify

the parties' obligations and more clearly distinguish the existing FTR "routed export transaction" definition from the new term that will be added to the EAR to replace the term "routed export transaction."

Revisions to § 748.4, Basic guidance related to applying for a license.

Section 748.4, paragraph (a)(2) describes the licensing options available in a "routed export transaction." It provides that either the USPPI or the FPPI's U.S. agent may apply for an export license and specifies that the FPPI's U.S. agent must have written authorization from the FPPI before submitting an application.

This rule proposes to revise § 748.4(a)(2) by changing the heading to "Foreign Principal Party Controlled Export Transaction." It further proposes revising the text of § 748.4(a)(2) to provide that, unless authorized by § 758.3, the USPPI will be the exporter and the party responsible for applying to BIS for a license, when required, even if the FPPI is responsible for the export of the items out of the United States. When authorized by § 758.3, the FPPI's designated U.S. agent may apply for a license to export items from the United States. This revision maintains and clarifies the obligations of each party and removes the potential confusion resulting from the use of the term "routed export transaction."

This rule also proposes to revise § 748.4(b)(2)(i)(a) by removing the phrase "routed transaction" and replacing it with the phrase "Foreign Principal Party Controlled Export Transaction."

Revisions to § 750.7, Issuance of licenses.

Section 750.7, paragraph (d) describes the responsibilities of the licensee, the person to whom the license is issued. It provides that in a reexport or routed export

transaction, a U.S. agent, if there is one, for an FPPI will be the licensee and that both the U.S. agent and the FPPI are responsible for ensuring compliance with the license. This rule proposes to remove the phrase “routed export transaction” and replace it with “Foreign Principal Party Controlled Export Transaction.”

Revisions to § 758.1, Automated Export System (AES) record.

In section 758.1, which describes the Automated Export System (AES) record, the phrase “routed transaction” is used in paragraphs (f)(2) and (h)(1)(i). This term means the same as a “routed export transaction.” This rule proposes to remove both phrases and replace them with the phrase “Foreign Principal Party Controlled Export Transaction.”

Revisions to § 758.3, Responsibilities of parties to the transaction.

Section 758.3 provides that all parties who participate in transactions subject to the EAR must comply with the EAR. It also describes the responsibilities of the parties to an export transaction and describes the requirements for delegating certain of those responsibilities to other parties to the transaction or to agents. This proposed rule would revise this section to clarify the responsibilities of the parties to the transaction and provide for increased information sharing. BIS is not proposing to alter the general responsibilities of the parties. This rule does, however, propose changes to the requirements for delegating the responsibility for licensing determination and licensing to the FPPI, by clarifying that the USPPI must agree to the delegation, through a written authorization, and that the FPPI must accept the delegation in writing and identify the U.S. agent authorized to act as the exporter, as described in detail below in the description of the proposed changes to § 758.3(b).

Section 758.3(a), Export transactions.

This rule proposes to revise § 758.3(a) by changing the first sentence to state: “The U.S. principal party in interest is the exporter, except in certain transactions and subject to certain requirements, described in paragraph (b) of this section.” Some exporters, freight forwarders, and foreign parties have misunderstood the current language to require the USPPI to allow the FPPI to assume responsibility for determining licensing requirements and obtaining license authority in all routed export transactions, as defined by the Census Bureau, because the current language states that the USPPI is the exporter “except in certain routed transactions.” This change will clarify that the USPPI is the exporter in all export transactions, except when the specific requirements of § 758.3(b) are met to create a “Foreign Principal Party Controlled Export Transaction.” However, this does not change the USPPI’s responsibilities as defined in the Foreign Trade Regulations (15 CFR Part 30).

Section 758.3(b), Routed Export Transactions.

This rule proposes to revise § 758.3(b) to state that when the agreement between the parties to a transaction allows the FPPI, through its U.S. agent, to take possession and control the movement of items sent out of United States, the USPPI may allow the FPPI to assume responsibility for determining licensing requirements and obtaining license authority if, and only if, the FPPI complies with certain requirements. These requirements will be described in three new paragraphs: §§ 758.3(b)(1) - (b)(3). These requirements will generally follow the documentary requirements in the current § 758.3(b) and § 758.3(d) and the information sharing requirements in the current § 758.3(c). These new sections will strengthen the requirements by providing greater detail on the required

contents of the documentation and information sharing. This rule would also remove § 758.3(c) and § 758.3(d).

In addition, the heading for paragraph (b) to section 758.3 would also be revised to “Foreign Principal Party Controlled Export Transaction.” The end-use and end-user controls found in Part 744 of the EAR and the General Prohibitions found in Part 736 of the EAR would continue to be applicable to all transactions, including “Foreign Principal Party Controlled Export Transactions.”

Section 758.3(b)(1), Written Assumption of Responsibility.

This rule proposes new § 758.3(b)(1), which would state that in order to transfer licensing responsibility, the USPPI must provide the FPPI with a written authorization (such as a contract, letter, facsimile, or email) which assigns to the FPPI responsibility for determining licensing requirements and obtaining license authority. The FPPI must provide the USPPI with a writing that acknowledges its assumption of those responsibilities, and which identifies the U.S. agent of the foreign principal party in interest authorized to act as the exporter for EAR purposes. A single writing may still be used to cover multiple transactions between the same principals.

Section 758.3(b)(2), Power of Attorney or Other Written Authorization.

This rule proposes new § 758.3(b)(2), which would state that prior to assuming responsibility from the USPPI for determining licensing requirements and obtaining license authority, the FPPI would be required to designate an agent in the United States to represent the FPPI. The FPPI would also be required to provide a power of attorney or other written authorization to its U.S. agent to authorize the agent to act on its behalf. The FPPI’s U.S. agent would be required to have the power of attorney or other written

authorization before the agent may represent the FPPI or apply for a license on the FPPI's behalf. The FPPI would also be required to provide the USPPI with a copy of the power of attorney or other written authorization prior to the FPPI's assuming responsibility from the USPPI for determining licensing requirements and obtaining license authority.

Section 758.3(b)(3), Information Sharing Requirement.

This rule proposes a new § 758.3(b)(3), with two sub-paragraphs. Section 758.3(b)(3)(i) would require the USPPI to provide the FPPI and its U.S. agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine a classification, upon the request of the FPPI or its U.S. agent. The USPPI would also be required to provide the FPPI and its U.S. agent with any information that the USPPI "knows" may affect the determination of license requirements or export authorization. The USPPI will be held to the "knowledge" standard defined in Part 772 of the EAR.

Section 758.3(b)(3)(ii) would require the FPPI to authorize the USPPI to obtain from the FPPI's U.S. agent certain information related to the transaction, and direct the U.S. agent to provide such information to the USPPI, upon request. Specifically, upon request, the FPPI's U.S. agent must provide the USPPI with the date of export, port of export, country of ultimate destination and destination port, method of transportation and specific carrier identification, and export authorization (e.g., license number, license exemption, or NLR designation). This information sharing will enable the USPPI to confirm that the export was properly authorized.

Revisions to § 772.1, Responsibilities of parties to the transaction.

This proposed rule would revise § 772.1 to remove the term “routed export transaction” from the list of definitions of terms used in the EAR, as this definition will become unnecessary. This rule would also revise the definitions of “Forwarding agent” to remove the term “routed export transaction” from that definition and to replace it with “Foreign Principal Party Controlled Export Transaction.” Finally, the term, “Foreign Principal Party Controlled Export Transaction” is proposed to be added to § 772.1 and defined as a transaction meeting the requirements of § 758.3(b). It would also state that the FPPI may only assume the responsibility for determining licensing requirements and obtaining license authority when the FPPI is responsible for the movement of the items out of the United States.

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before [INSERT DATE SIXTY DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. All comments (including any personally identifying information or information for which a claim of confidentiality is asserted in either those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Export Administration Act

Although the Export Administration Act of 1979, as amended, expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 C.F.R., 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78

FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a “not significant regulatory action,” under §3(f) of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule does not affect any paperwork collection.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the

notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under §605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to §605(b), the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, BIS has not prepared a regulatory flexibility analysis. A summary of the factual basis for the certification is provided below.

Number of Small Entities

The Bureau of Industry and Security (BIS) does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number.

Economic Impact

For the majority of businesses impacted by this rule, including the majority of small businesses, the likely effect of this rule will be a reduction in the burden associated with preparing export-related documents. This rule will reduce the burden on small entities by simplifying the regulatory burden on exporters when determining whether or not to mark the transaction as a “routed export transaction” as required in the Foreign Trade Regulations. This rule would accomplish this by reducing or eliminating potential

confusion stemming from differences between the Foreign Trade Regulations and Export Administration Regulations (EAR) through the elimination of the term “routed export transaction” entirely from the EAR. In addition, to eliminate the use of the term “routed export transaction” under the EAR, this rule would refine certain procedures for creating a “Foreign Principal Party Controlled Export Transaction”. The USPPI would be required to authorize the delegation of the responsibility for licensing determination and licensing to the FPPI, through a written authorization, and the FPPI must accept the delegation in writing and identify the U.S. agent authorized to act as the exporter, although this may be accomplished within a single writing.

List of Subjects:

15 CFR Parts 748, 750, and 758

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

Accordingly, Parts 748, 750, 758, and 772 of the EAR (15 CFR Parts 730-774) are proposed to be amended as follows:

PART 748 – [AMENDED]

1. The authority citation for Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

2. Section 748.4 is amended by revising paragraph (a)(2) and (b)(2)(i)(A), to read as follows:

§748.4 Basic guidance related to applying for a license.

(a) * * *

(2) Foreign Principal Party Controlled Export Transaction. In an export transaction where the foreign principal party in interest is responsible for the movement of the items out of the United States, either the U.S. principal party in interest or, when authorized by §758.3(b) of the EAR, the foreign principal party in interest's designated U.S. agent may apply for a license to export items from the United States. Prior to submitting an application, the U.S. agent that applies for a license on behalf of the foreign principal party in interest must obtain a power of attorney or other written authorization from the foreign principal party in interest pursuant to § 758.3(b)(2) of the EAR.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) An agent, applicant, licensee and exporter for a foreign principal party in interest in a "Foreign Principal Party Controlled Export Transaction;" or

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PART 750 – [AMENDED]

3. The authority citation for Part 750 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec 1503, Pub. L. 108-11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003-23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

4. Section 750.7 is amended by removing “routed export transactions” and adding in its place “Foreign Principal Party Controlled Export Transactions” in the third sentence of paragraph (d).

PART 758 – [AMENDED]

5. The authority citation for Part 758 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

6. Section 758.1 is amended by:

- a. Removing “routed transactions” and adding in its place “Foreign Principal Party Controlled Export Transactions” in paragraph (f)(2); and

- b. Removing “routed transaction” and adding in its place “Foreign Principal Party Controlled Export Transaction” in paragraph (h)(1)(i).

7. Section 758.3 is revised to read as follows:

§ 758.3 Responsibilities of parties to the transaction.

All parties that participate in transactions subject to the EAR must comply with the EAR. Parties are free to structure transactions as they wish, and to delegate functions and tasks as they deem necessary, so long as the transaction complies with the EAR. However, acting through a forwarding or other agent, or delegating or redelegating authority, does not in and of itself relieve any party of responsibility for compliance with the EAR.

(a) *Export transactions.* The U.S. principal party in interest is the exporter, except in a “Foreign Principal Party Controlled Export Transaction” described in paragraph (b) of this Section. The exporter must determine licensing authority (License or License Exception) or that no license is required (NLR), and obtain the appropriate license or other authorization, if necessary, prior to exporting. The exporter may hire forwarding or other agents to perform these tasks, but doing so does not relieve the exporter of these responsibilities.

(b) *Foreign Principal Party Controlled Export Transaction.* In export transactions where the foreign principal party in interest is responsible for the movement of the items out of the United States, the U.S. principal party in interest may allow the foreign principal party in interest to assume responsibility for determining licensing requirements and, if necessary, obtaining a license or other export authorization, subject to the requirements

set forth in the remainder of this paragraph. Absent full compliance with these requirements, the U.S. principal party in interest is the exporter for purposes of the EAR, and must determine licensing requirements and obtain the appropriate license or other export authorization, if necessary. All provisions of the EAR, including the end-use and end-user controls found in Part 744 of the EAR, and the General Prohibitions found in Part 736 of the EAR, apply to all parties to a Foreign Principal Party Controlled Export Transaction.

(1) *Written Assumption of Responsibility.* The U.S. principal party in interest may assign the foreign principal party in interest, in a writing, responsibility for determining licensing requirements and obtaining license authority, if necessary. The foreign principal party in interest must provide the U.S. principal party in interest a written document that acknowledges the foreign principal party in interest's assumption of the responsibility and identifies the U.S. agent of the foreign principal party in interest authorized to act as exporter for export licensing purposes. One writing may cover multiple transactions between the same principals.

(2) *Power of Attorney or Other Written Authorization.* The foreign principal party in interest must designate an agent in the United States for a "Foreign Principal Party Controlled Export Transaction." The U.S. agent must obtain a power of attorney or other written authorization from the foreign principal party in interest before it may act on its behalf or apply for a license. Upon request, the foreign principal party in interest must provide the U.S. principal party in interest with a copy of the power of attorney or other written authorization.

(3) Information Sharing Requirements. (i) The U.S. principal party in interest, upon request, must provide the foreign principal party in interest and its forwarding or other agent with the correct Export Control Classification Number (ECCN), or with sufficient technical information to determine classification. In addition, the U.S. principal party in interest must provide the foreign principal party in interest or the foreign principal's agent any information that it knows may affect the determination of license requirements or export authorization.

(ii) The foreign principal party in interest must authorize the U.S. principal party in interest to obtain from the foreign principal party in interest's U.S. agent the following information, and direct its U.S. agent to provide such information to the U.S. principal party in interest, upon request:

- (A) Date of export;
- (B) Port of export;
- (C) Country of ultimate destination;
- (D) Destination port;
- (E) Method of transportation;
- (F) Specific carrier identification; and
- (G) Export authorization (e.g., license number, license exemption, or NLR designation).

PART 772 – [AMENDED]

8. The authority citation for Part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 08, 2013, 78 FR 49107 (August 12, 2013).

9. Section 772 is amended by:

- a. Adding the definition for “Foreign Principal Party Controlled Export Transaction” in alphabetical order, as set forth below;
- b. Revising the definition for “Forwarding agent”, as set forth below; and
- c. Removing the definition of “Routed export transaction.”

§ 772.1 Definitions of terms as used in the Export Administration

Regulations (EAR).

* * * * *

Foreign Principal Party Controlled Export Transaction. A transaction meeting the requirements of § 758.3(b), where the foreign principal party in interest assumes responsibility for determining licensing requirements and obtaining license authority through its U.S. agent. The assumption of responsibility for determining licensing requirements and obtaining license authority is only authorized when the foreign principal party in interest is responsible for the movement of the items out of the United States.

* * * * *

Forwarding agent. The person in the United States who is authorized by a principal party in interest to perform the services required to facilitate the export of the items from the United States. This may include air couriers or carriers. In Foreign Principal Party

Controlled Export Transactions, the forwarding agent and the exporter may be the same for compliance purposes under the EAR.

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Dated: January 15, 2014

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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